GPN-J.332-ARCHB-8.94-1310500-ALA4 Spl-H.C.A.S.C.D.79e

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 4092 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.)

Court's or Judge's orders

Smt. Anita A. Agarwal for Petitioner.

Mr. R.D. Rane, G.P. for Respondent.

Mr. Nitin Jamdar for Respondent Nos. 4 and 5.

Mr. V.V. Purwant for Respondent No. 6.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : FEBRUARY 07, 2005

P.C.

. The Petitioner by the present petition has prayed amongst others for relief that he be treated as regular and permanent employee under the provisions of the M.E.P.S. Act 1977 and be given consequential benefits. Further relief that he be paid unpaid salary which is due and available to the post to which petitioner was appointed and has not been paid.

. On behalf of the Respondent Nos. 1 to 3 reply has bee filed. In Para 4 it is set out that the Respondents had granted approval to the appointment of the Petitioner for the year 1999-2000 as part time only on temporary basis. All the other appointments which the petitioner relies upon were also either as part time and against temporary vacancies. To attract Section 5 of the M.E.P.S. Act, if the teacher has to be treated as deemed permanent, there must be regular vacancy to be filled in by following due procedure. In the instant case there is no regular vacancy and consequently the relief prayed for by the petitioner in so far as permanency is concerned, must be rejected.

. The other grievance of the petitioner is that salary for the period worked, has not been paid. On behalf of the Respondent Nos. 4 and 5 their learned counsel makes a statement that all unpaid salary which is due and payable to the petitioner will be paid within the period of six weeks from today. Statement on behalf of the Respondent Nos. 4 and 5 accepted. Even otherwise the petitioner wold have been entitled to the said salary. The

Respondent Nos. 4 and 5 are directed to pay petitioners unpaid salaries within the period of six weeks from today. It is contended on behalf of the Respondent nos. 4 and 5 that the petitioners has worked in the post which was approved by the Government. If that be so, the Respondent Nos. 4 and 5 will be entitled to reimburse the salary for Respondent Nos. 1 to 3. That however, does not mean that petitioner should not be paid salary till grants are released. In the first instance, it is duty of Respondent Nos. 4 and 5 to pay salary which has been directed to be paid in terms aforesaid.

(F.I.REBELLO,J.)

(S.P.KUKDAY,J.)